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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,150	07/10/2001	Masayuki Tomita	4468-020	5837

22429 7590 01/02/2004

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EXAMINER

BAKER, STEPHEN M

ART UNIT	PAPER NUMBER
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2133

DATE MAILED: 01/02/2004

4

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/901,150

Applicant(s)

TOMITA, MASAYUKI

Examiner

Stephen M. Baker

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2133

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

If claim 2 is to be treated as adding a further limit to claim 1 rather than reciting a limitation already inherent in claim 1, then the intended scope of the term "equivalence" as used in "equivalence packet" in claim 1, and consequently the intended scope of the term wherever it is recited, is made unclear.

### ***Claim Objections***

3. Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form.

In light of the disclosure, a limitation upon "comparison data" to be "either 0 or 1", even if narrowly construed to mean "either all 0 or all 1", appears to be inherent in "comparison data that should have the value of said digital data of said equivalence packet" as recited in claim 1, if the term "equivalence packet" is to be taken as being of

narrower scope than would be met by any packet with data to be subjected to the claimed comparison process.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S.

Patent No. 6,542,538 to Fischel *et al* (hereafter Fischel).

Fischel discloses comparison of transmitted and received test data patterns for bit error rate testing (col. 16, lines 44-60) using test packets (Fig. 9) to carry the test data patterns in the payload portions (916). The test data pattern may be pseudo-random, an all ones pattern, or some other pattern (col. 6, lines 55-65). Fischel's testing arrangement may be implemented in hardware or software (col. 18, lines 32-38).

6. Claims 1, 3, 3, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by European Patent Application EP 0 961 437 A1 to Huysmans *et al* (hereafter Huysmans).

Huysmans discloses comparison of transmitted and received test data patterns for bit error rate testing (par. 0042-0043) using unused cells as test packets to carry the test data patterns in the payload portions.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huysmans.

Regarding claim 6, Huysmans doesn't specify using pseudo-random data for the test data. Official notice is taken that the advantages of using pseudo-random data for error rate testing were well known at the time the invention was made. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to implement the test patterns in Huysmans' testing arrangements by using pseudo-random test data. Such an implementation would have been obvious because the advantages of using pseudo-random data for error rate testing were well known at the time the invention was made.

Regarding claims 4 and 8, Huysmans doesn't specify implementing in software the logic of the testing arrangements. Official notice is taken that the advantages of using software to implement logic arrangements were well known at the time the

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invention was made. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to implement the logic in Huysmans' testing arrangements by using software. Such an implementation would have been obvious because the advantages of using software for implementing logic were well known at the time the invention was made.

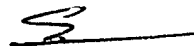
### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Baker whose telephone number is (703) 305-9681. The examiner can normally be reached on Monday-Friday (11:00 AM - 7:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert DeCady can be reached on (703) 305-9595. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800.



Stephen M. Baker  
Primary Examiner  
Art Unit 2133

smb